**Franchise Tax Board**

# SUMMARY ANALYSIS OF AMENDED BILL

Author: Vincent | Analyst: Jeff Garnier | Bill Number: SB 553

Related Bills: See Prior Analysis | Telephone: 845-5322 | Amended Date: April 16, 2001

Attorney: Patrick Kusiak | Sponsor: ____

**SUBJECT**: Donations of Cash or Land for Affordable Housing Credit

____ DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended ________________________.

X AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

X AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced February 22, 2001.

____ FURTHER AMENDMENTS NECESSARY.

____ DEPARTMENT POSITION CHANGED TO ________________________.

X REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED February 22, 2001 STILL APPLIES.

____ OTHER - See comments below.

## SUMMARY

This bill would allow a 20% credit for the donation of cash or real property to a non-profit corporation whose primary purpose is to provide affordable housing for certain individuals.

## SUMMARY OF AMENDMENT

The April 16, 2001, amendments:

- Delay the applicable date of the credit from taxable years beginning on or after January 1, 2001, and before January 1, 2006 to contributions made on or after January 1, 2002, and before January 1, 2007.
- Allow the credit to reduce regular tax below tentative minimum tax.
- Change the definition of several of the terms used in the credit and allow the contribution of cash or other property to a qualified donee to qualify for the credit.

The headings discussed in this analysis supersede the same headings in the February 22, 2001, analysis. The remainder of the department's analysis dated February 22, 2001, still applies.

## EFFECTIVE/OPERATIVE DATE

As a tax levy this bill would be effective immediately. However, the credit would apply to contributions made on or after January 1, 2002, and before January 1, 2007.

| Board Position: | | | Legislative Director | Date |
|---|---|---|---|---|
| ____ S | ____ NA | ____ NP | | |
| ____ SA | ____ O | ____ NAR | Brian Putler | 05/22/01 |
| ____ N | ____ OUA | X PENDING | | |

**POSITION**

Pending.

**Summary of Suggested Amendments**

Department staff is available to assist the author's staff in addressing the implementation considerations discussed in this analysis.

**ANALYSIS**

FEDERAL/STATE LAW

A partner's interest in a partnership is generally defined as the manner in which the partner's have agreed to share the economic benefits and burdens related to the income, gain, loss, deduction, or credit allocated. A partner with a 50% overall interest in a partnership may have a 90% interest in a particular item of income or deduction. All partners' interests in a partnership are presumed equal (determined on a per capita basis). The determination of a partner's interest in a partnership is based on all the facts and circumstances relating to the economic arrangements of the partners. Arrangements that lack substantial economic effect are ignored.

THIS BILL

This bill would provide for a credit equal to 20% of the fair market value of a qualified contribution made on or after January 1, 2002, and before January 1, 2007 to a qualified donee.

A qualified contribution would be defined as a contribution of cash or real property or a perpetual interest in real property. Real property that is to be contributed may be developed or undeveloped and must meet the following criteria:

1. The real property must be located in California.
2. At the time the real property is contributed, the taxpayer cannot be mandated by a local agency to provide affordable or low-income housing.
3. The real property must be approved for acceptance by a qualified donee.

A qualified donee would be defined as a nonprofit corporation organized under the Nonprofit Corporation Law (Division 2 of Title 1) of the Corporations Code. The principal purpose for which the donee was organized must be to enable ownership, development, or management of housing or community development projects for certain persons. Certain persons would include those who are disadvantaged, have a transitional need, have low income, or are a member of a targeted group as defined in Internal Revenue Code Section 51(d)(1) (relating to targeted groups for the work opportunity tax credit).

A qualified donee could be located in different jurisdictions of this state. The parcels of land held by the qualified donee would not be required to be contiguous.

The qualified donee would be required to provide a certificate to the taxpayer. The certificate would include the name of the taxpayer, the name and address of the qualified donee, and the property description, including the location and parcel number, if applicable. The qualified donee would also be required to sign and date the certificate. If requested by the Franchise Tax Board, the taxpayer would be required to provide a copy of the certificate to the department.

If a passthrough entity makes a qualified contribution, the fair market value of the contribution must be passed through to the owners in accordance with their interest in the passthrough entity, determined as of the date of the contribution. Passthrough entity is defined to include any estate, trust, partnership, or S corporation. Because a particular partnership interest (e.g., ownership, percentage of profits or losses) is not specified, the partnership interest that would apply would be the ownership interest.

This credit would be in lieu of any other credit or deduction otherwise allowed with respect to the donation.

This bill would allow the credit to reduce regular tax below tentative minimum tax.

Any excess credit could be carried over to future tax years until exhausted.

## IMPLEMENTATION CONSIDERATIONS

The bill specifies that real property or a perpetual interest in real property may be a qualified contribution. The bill does not specify any other types of interests in real property that may be donated to receive a credit, such as an easement or leasehold. An interest in land can be sold, transferred, or otherwise disposed of in several different manners (e.g., future or remainder interest). To avoid confusion, the author may desire to specify what types of interests in the property must be donated. Additionally, the term "perpetual interest" is not defined.

The bill does not provide any conditions to ensure that the land donated could not be converted to another use by the qualified donee.

The term "fair market value" needs to be clarified. Consideration should be given to clarifying whether the fair market value refers to the fair market value of the land used for affordable housing or for the land's highest and best use.

Under the bill, the qualified donee must have been organized for the principal purpose of enabling ownership, development or management of housing or community development for individuals who are disadvantaged, have a transitional need, have a low income, or members of a targeted group. However, the terms “community development,” “disadvantaged,” “transitional need,” and “low income” are not defined.

The bill provides special rules for contributions by passthrough entities and defines passthrough entities to include estates and trusts. Estates and trusts are subject to state tax on net income and are not normally considered passthrough entities. The assets of a trust are “owned” by a trustee for the benefit of other persons. The assets of an estate are owned by a fiduciary during the period of administration. It is unclear which “owners” of these entities would be entitled to the credit. The author may wish to consider deleting estates and trusts from the definition of passthrough entity.

**FISCAL IMPACT**

Once the implementation concerns are addressed, this bill would not significantly impact departmental costs.

**ECONOMIC IMPACT**

This proposal is estimated to impact PIT and B&CT revenue as shown in the following table.

| Fiscal Year Cash Flow Impact<br>Effective 1/1/01<br>Assumed Enactment After 6/30/01<br>$ Millions | | | |
|---|---|---|---|
| Assumption | 2001-02 | 2002-03 | 2003-04 |
| $35 Million In Donations | ($4) | ($7) | ($7) |
| $60 Million In Donations | ($7) | ($12) | ($12) |
| $110 Million In Donations | ($12) | ($22) | ($22) |

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this measure.

Revenue Discussion

The revenue impact for this bill will be determined by the value of property and the amount of cash that might be donated in any given year and the fact that tax liabilities of donors may be reduced below tentative minimum tax in applying these tax credits.

It is assumed that this proposal will generate approximately $10 million dollars in cash contributions each year, in new contributions and redirections of existing contributions. This amount is net of any other credit or deduction that the taxpayer may have otherwise claimed with respect to the qualified deduction of cash or property.

Except as noted, our analysis of the original bill dated February 23, 2001, still applies.

**ARGUMENTS/POLICY CONSIDERATIONS**

Even though the bill contains a repeal date, the department would be required to retain the carryover on the tax forms indefinitely because an unlimited credit carryover period is allowed. Recent credits have been enacted with a carryover period limitation since experience shows credits are typically used within eight years of being earned.

**LEGISLATIVE STAFF CONTACT**

| | |
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